

Rule 16 has superseded any need for the provision in former Rule 78 for orders for the advancement, conduct, and hearing of actions.

Rule 79. Records Kept by the Clerk

(a) CIVIL DOCKET.

(1) *In General.* The clerk must keep a record known as the “civil docket” in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) *Items to be Entered.* The following items must be marked with the file number and entered chronologically in the docket:

- (A) papers filed with the clerk;
- (B) process issued, and proofs of service or other returns showing execution; and
- (C) appearances, orders, verdicts, and judgments.

(3) *Contents of Entries; Jury Trial Demanded.* Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. When a jury trial has been properly demanded or ordered, the clerk must enter the word “jury” in the docket.

(b) CIVIL JUDGMENTS AND ORDERS. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(c) INDEXES; CALENDARS. Under the court’s direction, the clerk must:

- (1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and
- (2) prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.

(d) OTHER RECORDS. The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Compare [former] Equity Rule 3 (Books Kept by Clerk and Entries Therein). In connection with this rule, see also the following statutes of the United States:

U.S.C., Title 5:

§ 301 [see Title 28, § 526] (Officials for investigation of official acts, records and accounts of marshals, attorneys, clerks of courts, United States commissioners, referees and trustees)

§ 318 [former] (Accounts of district attorneys)

U.S.C., Title 28:

§ 556 [former] (Clerks of district courts; books open to inspection)

§ 567 [now 751] (Same; accounts)

§ 568 [now 751] (Same; reports and accounts of moneys received; dockets)

§ 813 [former] (Indices of judgment debtors to be kept by clerks)

And see “Instructions to United States Attorneys, Marshals, Clerks and Commissioners” issued by the Attorney General of the United States.

NOTES OF ADVISORY COMMITTEE ON RULES—1946

AMENDMENT

Subdivision (a). The amendment substitutes the Director of the Administrative Office of the United States Courts, acting subject to the approval of the Judicial Conference of Senior Circuit Judges, in the place of the Attorney General as a consequence of and in accordance with the provisions of the act establishing the Administrative Office and transferring functions thereto. Act of August 7, 1939, c. 501, §§ 1–7, 53 Stat. 1223, 28 U.S.C. §§ 444–450 [now 601–610].

Subdivision (b). The change in this subdivision does not alter the nature of the judgments and orders to be recorded in permanent form but it does away with the express requirement that they be recorded in a book. This merely gives latitude for the preservation of court records in other than book form, if that shall seem advisable, and permits with the approval of the Judicial Conference the adoption of such modern, space-saving methods as microphotography. See *Proposed Improvements in the Administration of the Offices of Clerks of United States District Courts*, prepared by the Bureau of the Budget (1941) 38–42. See also Rule 55, Federal Rules of Criminal Procedure [following section 687 of Title 18 U.S.C.].

Subdivision (c). The words “Separate and” have been deleted as unduly rigid. There is no sufficient reason for requiring that the indices in all cases be separate; on the contrary, the requirement frequently increases the labor of persons searching the records as well as the labor of the clerk’s force preparing them. The matter should be left to administrative discretion.

The other changes in the subdivision merely conform with those made in subdivision (b) of the rule.

Subdivision (d). Subdivision (d) is a new provision enabling the Administrative Office, with the approval of the Judicial Conference, to carry out any improvements in clerical procedure with respect to books and records which may be deemed advisable. See report cited in Note to subdivision (b), *supra*.

NOTES OF ADVISORY COMMITTEE ON RULES—1948

AMENDMENT

The change in nomenclature conforms to the official designation in Title 28, U.S.C., § 231.

NOTES OF ADVISORY COMMITTEE ON RULES—1963

AMENDMENT

The terminology is clarified without any change of the prescribed practice. See amended Rule 58, and the Advisory Committee’s Note thereto.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 79 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 80. Stenographic Transcript as Evidence

If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). This follows substantially [former] Equity Rule 50 (Stenographer—Appointment—Fees). [This subdivision was abrogated. See amendment note of Advisory Committee below.]

Note to Subdivision (b). See Reports of Conferences of Senior Circuit Judges with the Chief Justice of the United States (1936), 22 A.B.A.J. 818, 819; (1937), 24 A.B.A.J. 75, 77. [This subdivision was abrogated. See amendment note of Advisory Committee below.]

Note to Subdivision (c). Compare Iowa Code (1935) §11353.

NOTES OF ADVISORY COMMITTEE ON RULES—1946
AMENDMENT

Subdivisions (a) and (b) of Rule 80 have been abrogated because of Public Law 222, 78th Cong., c. 3, 2d Sess., approved Jan. 20, 1944, 28 U.S.C. §9a [now 550, 604, 753, 1915, 1920], providing for the appointment of official stenographers for each district court, prescribing their duties, providing for the furnishing of transcripts, the taxation of the fees therefor as costs, and other related matters. This statute has now been implemented by Congressional appropriation available for the fiscal year beginning July 1, 1945.

Subdivision (c) of Rule 80 (Stenographic Report or Transcript as Evidence) has been retained unchanged.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 80 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

TITLE XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Removed Actions

(a) **APPLICABILITY TO PARTICULAR PROCEEDINGS.**

(1) *Prize Proceedings.* These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§7651–7681.

(2) *Bankruptcy.* These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) *Citizenship.* These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. §1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) *Special Writs.* These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

(5) *Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.

(6) *Other Proceedings.* These rules, to the extent applicable, govern proceedings under the

following laws, except as these laws provide other procedures:

(A) 7 U.S.C. §§292, 499g(c), for reviewing an order of the Secretary of Agriculture;

(B) 9 U.S.C., relating to arbitration;

(C) 15 U.S.C. §522, for reviewing an order of the Secretary of the Interior;

(D) 15 U.S.C. §715d(c), for reviewing an order denying a certificate of clearance;

(E) 29 U.S.C. §§159, 160, for enforcing an order of the National Labor Relations Board;

(F) 33 U.S.C. §§918, 921, for enforcing or reviewing a compensation order under the Longshore and Harbor Workers' Compensation Act; and

(G) 45 U.S.C. §159, for reviewing an arbitration award in a railway-labor dispute.

(b) **SCIRE FACIAS AND MANDAMUS.** The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under these rules.

(c) **REMOVED ACTIONS.**

(1) *Applicability.* These rules apply to a civil action after it is removed from a state court.

(2) *Further Pleading.* After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed.

(3) *Demand for a Jury Trial.*

(A) *As Affected by State Law.* A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal. If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.

(B) *Under Rule 38.* If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:

(i) it files a notice of removal; or

(ii) it is served with a notice of removal filed by another party.

(d) **LAW APPLICABLE.**

(1) *“State Law” Defined.* When these rules refer to state law, the term “law” includes the state's statutes and the state's judicial decisions.

(2) *“State” Defined.* The term “state” includes, where appropriate, the District of Columbia and any United States commonwealth or territory.

(3) *“Federal Statute” Defined in the District of Columbia.* In the United States District Court